Supreme Court, U. S.
FILED
JAN 14 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77-957

In the matter of the application of Bernard Korzen as County Treasurer and Ex-officio county collector of Cook County Illinois for Judgement and order of sale against lands and lots upon which the General Taxes remain Due and Unpaid for the year 1973 and for Judgement fixing the correct amount of any Tax Paid under protest for the year 1973. RESPONDENT APPELLEE

VS JOHN A. HUTTER
OBJECTOR APPELLANT

Appeal from the Appellate Court of Illinois, First Judicial District and the Supreme Court of Illinois.

John A. Hutter
Attorney for Appellant pro se
Rte. 1, Sturgeon Bay, WI 54235
414-743-5774

and

3526 N. Marshfield Ave.
Chicago, IL 60657
312-GR7-2259

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No.

In the matter of the application of the County Collector for Judgement for Delinquent Taxes for the year 1973.

Appeal from the judgement of the Appellate Court of Illinois, First District and the Supreme Court of Illinois.

JURISDICTION STATEMENT

A. The Illinois Appellate Court in its order dated May 26, 1977 as set forth in appendice quotes Treasurer V Guaranty Bank & Trust Co. (1976) 43 Ill App 3d 566, 570, 357 N.E. 2 d 601; Treasurer V Commercial Stamping and Forging, Inc. (1976) 42 Ill App 3 d 895, 897, 356 N.E. 2 d 844; Treasurer V Jackson Enterprises, Inc. V Roseville (1976) 65 Ill. 2 d 420, 422.358NE 2 d 1139.

The Court also refers to Treasurer V Hutter (1975) 27 Ill. App 3 d 634,327 N.E. 2 d 138 (abst.) - 423 U.S. 807.

B. The jurisdiction of this court is involved because Appellant believes that the Illinois Statute requiring payment of taxes assessed in full under protest is repugnant to the constitution of the United States amendment 14 because it denies him his day in court and confiscates his property without due course.

(i) The Appellant filed objection No. 502 for 1973 taxes Miscl. No. 74-75 in the Circuit Court of Cook County County Department. The Circuit Court dismissed the objection because the Appellant had not paid the taxes in question in full under protest as required by section 194 of the Revenue Act. (Ill Rev. Stat 1973 Ch. 120 Par. 675).

Section 194 provides that "if any person desires to object pursuant to Section 235 of this Act to all or any part of a real property tax for any year, xxx he shall first pay all of the tax installments due" under protest.

(ii) The Appellant seeks this court to review the order of the Appellate Court of Illinois, First Judicial District dated May 26, 1977 and the denial of his petition for leave to appeal to the Supreme Court of Illinois dated September 30, 1977.

Appellants Notice of Appeal was filed in the above Appellate and Supreme Courts of Illinois on November 29 by mail copy thereof was served on the States Attorney of Cook County Illinois' attorney for the State and opposing counsel.

(iii) It is the duty of this court to determine whether a statute of a State is repugnant to the Constitution of the United States and its amendments.

(iv) In Zucht V King 260 U.S. 174, 176-177 the court stated as follows: "Provides that the court may review by a writ of error or appeal where the validity of a law is sustained by the highest court of the state in which a decision in the suit could be had --- Atlantic Coast Line R Co. V Goldsboro - pages 175-177 -

(v) Section 194 of the Illinois Revenue Act provides that "If any person desires to object pursuant to Section 235 of this act to all or any part of a real property tax for any year, --- he shall first pay all of the tax installments due". Illinois Revenue Statute 1973, Ch. 120 par. 675.

C. The questions presented by this appeal is whether any state, may, as set forth in the statute outlined in pp V above, deny any person due process and his day in court as provided in amendment 14.

(The effect of this case is to deprive and take from the Appellant, his property without compensation and due process).

D. In 1967 the assessor doubled the assessed valuation of the real estate located at 3526-28 North Marshfield Avenue, Chicago, Illinois (Lake View Township).

The County Court (Judge McGillicuddy), with the approval of the States Attorney, reduced the valuation back to what it was the four preceeding years.

In subsequent years the Assessor and the Board of Appeals ignored the decision of the County Court and placed an assessed valuation so high that it exceeded the gross income of the property.

The Board of Appeals granted no relief.

In the year 1973 taxes, the objector Hutter, listed in a brief presented to the Circuit Court (Judge Dempsey) the gross income of the property for the following years: 1971 - $14,159.00; 1972 - $3,888.00; 1973 - $6,021.00; 1974 - $8,717.00.

It is obvious that the objector could not pay the taxes assessed ($7,594.00) for 1973 in full under protest.

The Appellant raised the federal constitutional questions before Judge Dempsey in the Circuit Court as he had in previous years, where the case was dismissed upon motion by the States Attorney that the Appellant had not paid the taxes in full under protest.

The same question was raised in the Appellate Court and Illinois Supreme Court, (page 2 of Appellants Brief and argument).

D. During the depression years in the thirties, hundreds of thousands of tax payers could not pay the confiscatory taxes assessed against them, so in class actions before the Illinois Courts, they sought relief.

The Illinois legislature fixed them; it passed a law stating they could not have court relief unless they paid their taxes first under protest. This subtle move eliminated the provisions of Amendment 14.

Now, even if a tax payer does pay the assessed taxes under protest and goes the expensive way of the courts; the courts decision is ignored by the assessor the next year as happened in this case.

The assessor does not have any problem securing political contributions or favors.

While he was assessing Hutters income? property at more than the gross income he assessed the 100 million dollar John Hancock building at one (1)% of its value.

In this 1977 year of recovery ? tax payers cannot pay the huge increase in assessments against them and once again are threatening class action and tax strikes.

This unconstitutional law prevents them from having a court hearing.

This appeal is in a very true sense - a class action for constitutional protection.

The City of Chicago, like most cities will not or cannot protect the lives and property of its inhabitants from crime and vandalism which has destroyed the possibility of people living in peace without threats to their lives and property by street gangs and criminals.

This appeal is so substantial and affects the lives and property of so many people as to require plenary consideration with briefs on the merits and oral argument for their resolution.

The statute in question can only be interpreted as a means of deny people protection of our constitution.

In Wisconsin, a sister state, anyone can appeal his taxes through the Supreme Court without paying the taxes.

In the meantime the statute runs and if taxes are not paid within a few years with interest, the property is deeded to the County. Our Constitution is meaningless if this court does not protect its citizens from the tyranny of local governments.

Respectfully submitted,

John A. Hutter
Attorney at Law (Illinois)
appearing pro se

76-884

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE APPLICATION OF BERNARD KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGEMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE GENERAL TAXES REMAIN DUE AND UNPAID FOR THE YEAR 1973 AND FOR JUDGEMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEAR 1973,

Respondent-Appellee,

vs.

JOHN A. HUTTER,

Objector-Appellant.

Appeal from the
Circuit Court of
Cook County.

Honorable
Robert J. Dempsey,
Judge Presiding.

ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23

John A. Hutter (hereinafter objector) did not pay general taxes for the year 1973 on certain property in the City of Chicago. The Cook County Treasurer as **ex-officio** County Collector sought entry of a judgement and order of sale for delinquent taxes. An objection was filed claiming that the assessed valuation of the property was excessive and it requested the modification of said valuation. The objection was dismissed because the objector failed to pay the full taxes on the property under protest for the year in question, as set forth in section 194 of the Revenue Act. (Ill. Rev. Stat. 1973, ch. 120, par. 675.) The sole contention advanced by the objector on appeal is that the statutory mandate of section 194 requiring full payment of taxes, before challenge can be made to the taxes owed, deprives objector of due process of law.

Section 194 of the Revenue Act provides that "[i]f any person desires to object pursuant to Section 235 of this Act to all or any part of a real property tax for any year, * * * he shall first pay all of the tax installments due" under protest. (Ill. Rev. Stat. 1973, ch. 120, par. 675.) The legislative history of section 194 of the Revenue Act has been interpreted in numerous decisions to require that the full amount of the tax installments for the year must be paid in order to permit the court to consider any tax objection. **In re Application of County Treasurer v. Milstine** (1st Dist.), _____ Ill. App. 3d _____, _____, _____ N.E. 2d _____ (No. 62700, filed March 2, 1977); **In re Application of County Treasurer v. Guaranty Bank & Trust Co.** (1976), 43 Ill. App. 3d 566, 570, 357 N.E. 2d 601; **In re Application of County Treasurer v. Commercial Stamping & Forging, Inc.**(1976), 42 Ill. App. 3d 895,

897, 356 N.E. 2d 844; see also **28 E. Jackson Enterprises, inc. v. Rosewell** (1976), 65 Ill. 2d 420, 422, 358 N.E. 2d 1139.

Objector, without citation of authority, contends that full payment of taxes as a condition precedent is violative of due process. Such contention has been previously rejected by this court. (**In re Application of County Treasurer v. Hutter** (1975), 27 Ill. App. 3d 634, 327 N.E. 2d 138 (abst.), **appeal dismissed for want of jurisdiction,** 423 U.S. 807.) However, we need not apply this decision to the present case.

The record before us does not show the objector ever asserted at trial that he could not fully pay the taxes for the period in question. While the objector suggests in his brief that full payment could not be made, this factual assertion did not appear to be presented to the trial court; and such consideration is **dehors** the record and not before this court. **People v. C. Betts Realtors, Inc.,** ___ Ill 2d_____, _____, _____ N.E. 2d _____ (Nos. 48359-64, filed March 23, 1977).

In **Exchange National Bank v. Cullerton** (1974), 17 Ill. App. 3d 392, 308 N.E. 2d 284, the same contention now advanced by the objector was made. This court, however, indicated the plaintiff could not avail itself of such constitutional claim:

> "* * * [P]laintiff contends that this requirement deprives parties unable to pay excessive property taxes under protest of due process of law. In view of this contention an allegation in the complaint that plaintiff was unable to pay the taxes under protest was essential. If plaintiff were **not** a party unable to pay its taxes under protest, it would

not be prejudiced by the unconstitutionality of the statute on the grounds indicated. In the instant case, plaintiff elected to stand on its complaint. However, the complaint did not allege plaintiff's inability to pay the taxes under protest. The complaint was insufficient in failing to make an essential allegation and was properly the subject of a motion to dismiss." 17 Ill. App. 3d at 395 (emphasis in original).

The record in this appeal presents a resembling situation. Similarly, under the circumstances of this case, we conclude the trial court did not err in refusing relief sought by the objector.

We have also concluded that an opinion in this case would have no precedential value. Accordingly, and pursuant to Supreme Court Rule 23 (Ill. Rev. Stat. 1975, ch. 110A, par. 23), the judgement of the circuit court of Cook County is affirmed.

DATED AT CHICAGO, ILLINOIS this 26th day of May, 1977.

ENTER:

PHILIP ROMITI, Justice

GLENN T. JOHNSON, Justice

DAVID LINN, Justice

GILBERT S. MARCHMAN
CLERK OF THE APPELLATE COURT
FIRST DISTRICT OF ILLINOIS
CHICAGO CIVIC CENTER
CHICAGO 60602

November 14, 1977

Honorable Morgan M. Finley, Clerk
Circuit Court of Cook County
Chicago, Illinois 60602

RE: In The Matter of The Application of Bernard Korzen, etc. v. John A. Hutter Appellate Court Number 76-884 Trial Court Number OBJ. No. 502

Dear Mr. Finley:

Enclosed is the mandate of the Appellate Court in the above entitled cause.

Please acknowledge receipt of same on the copy of the letter enclosed.

Very truly yours,

GILBERT S. MARCHMAN
Clerk of the Appellate Court
First District, Illinois

GSM:rs

cc: John A. Hutter
Honorable Bernard Carey

IN THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT and the SUPREME COURT OF ILLINOIS

In the matter of application of Bernard Korzen as County Treasurer and ex officio county of Cook County, Illinois, for Judgement and Order of Sale against lands and lots upon which the general taxes remain due and unpaid for the year 1973 and for judgement fixing the correct amount of any tax paid under protest for the year 1973 vs. John A. Hutter.

NOTICE OF APPEAL

The appellant, John A. Hutter, appearing pro se, hereby appeals the Judgement of the Appellate Court of Illinois, First District, dated May 26, 1977, case no. 76884 and the order of the Supreme Court of Illinois, denying appellant John A. Hutter's petition for leave to appeal in the above entitled cause dated September 30, 1977, Case no. 49735, to the United States Supreme Court.

This case is appealed because federal questions are basic and substantial. (see Zucht vs. King 260 U.S. 174, 176, 177)

John Hutter
3526 N. Marshfield Ave.
Chicago, IL 60657
GR 7-2259

In residence:

Rte. 1
Sturgeon Bay, WI 54235
414/743-5774

I hereby certify that a copy hereof was served on the States Attorney of Cook County, the Clerk of the Appellate Court and the Clerk of the Supreme Court of the United States by certified mail this 26 day of November, 1977

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

L. L. WOODS
CLERK

TELEPHON
AREA CODE
782-203

September 30, 1977

Mr. John Hutter
Attorney at Law
Route 1
Sturgeon Bay, Wisconsin 54235

No. 49735 - Bernard Korzen as County Treasurer, etc., respondent, vs. John A. Hutter, petitioner. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court